

## § 26.61

## 10 CFR Ch. I (1–1–16 Edition)

(b) If a licensee or other entity administratively withdraws an individual's authorization under paragraph (a)(2) of this section, and until the suitable inquiry is completed, the licensee or other entity may not record the administrative action to withdraw authorization as an unfavorable termination and may not disclose it in response to a suitable inquiry conducted under the provisions of § 26.63, a background investigation conducted under the provisions of this chapter, or any other inquiry or investigation. The individual may not be required to disclose the administrative action in response to requests for self-disclosure of potentially disqualifying FFD information, except if the individual's authorization was subsequently denied or terminated unfavorably by the licensee or other entity.

(c) Before granting authorization to an individual whose authorization has been interrupted for a period of no more than 30 days and whose last period of authorization was terminated favorably, the licensee or other entity shall ensure that—

(1) A self-disclosure has been obtained and reviewed under the applicable requirements of § 26.61;

(2) The individual has been subject to pre-access drug and alcohol testing under the applicable requirements of § 26.65, if the individual's authorization was interrupted for more than 5 days; and

(3) The individual is subject to random drug and alcohol testing under the applicable requirements of § 26.67.

(d) If potentially disqualifying FFD information is disclosed or discovered, the licensee or other entity may not grant authorization to the individual, except under § 26.69.

### **§ 26.61 Self-disclosure and employment history.**

(a) Before granting authorization, the licensee or other entity shall ensure that a written self-disclosure and employment history has been obtained from the individual who is applying for authorization, except as follows:

(1) If an individual previously held authorization under this part, and the licensee or other entity has verified that the individual's last period of au-

thorization was terminated favorably, and the individual has been subject to a behavioral observation program that includes arrest reporting, which meets the requirements of this part, throughout the period since the individual's last authorization was terminated, the granting licensee or other entity need not obtain the self-disclosure or employment history in order to grant authorization; and

(2) If the individual's last period of authorization was terminated favorably within the past 30 days, the licensee or other entity need not obtain the employment history.

(b) The written self-disclosure must—

(1) State whether the individual has—

(i) Violated a licensee's or other entity's FFD policy;

(ii) Had authorization denied or terminated unfavorably under §§ 26.35(c)(2), 26.53(i), 26.63(d), 26.65(g), 26.67(c), 26.69(f), or 26.75(b) through (e);

(iii) Used, sold, or possessed illegal drugs;

(iv) Abused legal drugs or alcohol;

(v) Subverted or attempted to subvert a drug or alcohol testing program;

(vi) Refused to take a drug or alcohol test;

(vii) Been subject to a plan for substance abuse treatment (except for self-referral); or

(viii) Had legal action or employment action, as defined in § 26.5, taken for alcohol or drug use;

(2) Address the specific type, duration, and resolution of any matter disclosed, including, but not limited to, the reason(s) for any unfavorable termination or denial of authorization; and

(3) Address the shortest of the following periods:

(i) The past 5 years;

(ii) Since the individual's eighteenth birthday; or

(iii) Since the individual's last period of authorization was terminated, if authorization was terminated favorably within the past 3 years.

(c) The individual shall provide a list of all employers, including the employer by whom the individual claims

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to have been employed on the day before he or she completes the employment history, if any, with dates of employment, for the shortest of the following periods:

- (1) The past 3 years;
- (2) Since the individual's eighteenth birthday; or
- (3) Since authorization was last terminated, if authorization was terminated favorably within the past 3 years.

### § 26.63 Suitable inquiry.

(a) In order to grant authorization, licensees and other entities shall ensure that a suitable inquiry has been conducted, on a best effort basis, to verify the individual's self-disclosed information and determine whether any potentially disqualifying FFD information is available, except if all of the following conditions are met:

- (1) The individual previously held authorization under this part;
- (2) The licensee or other entity has verified that the individual's last period of authorization was terminated favorably; and
- (3) The individual has been subject to a behavioral observation program that includes arrest reporting, which meets the requirements of this part, throughout the period of interruption.

(b) To meet the suitable inquiry requirement, licensees and other entities may rely on the information that other licensees and entities who are subject to this subpart have gathered for previous periods of authorization. Licensees and other entities may also rely on those licensees' and entities' determinations of fitness that were conducted under § 26.189, as well as their reviews and resolutions of potentially disqualifying FFD information, for previous periods of authorization.

(c) The licensee or other entity shall ensure that the suitable inquiry has been conducted, on a best effort basis, by questioning former employers, and the employer by whom the individual claims to have been employed on the day before he or she completes the employment history, if an employment history is required under § 26.61.

(1) For the claimed employment period, the suitable inquiry must ascertain the reason for termination, eligi-

bility for rehire, and other information that could reflect on the individual's fitness to be granted authorization.

(2) If the claimed employment was military service, the licensee or other entity who is conducting the suitable inquiry shall request a characterization of service, reason for separation, and any disciplinary actions related to potentially disqualifying FFD information. If the individual's last duty station cannot provide this information, the licensee or other entity may accept a hand-carried copy of the DD 214 presented by the individual which on face value appears to be legitimate. The licensee or other entity may also accept a copy of a DD 214 provided by the custodian of military records.

(3) If a company, previous employer, or educational institution to whom the licensee or other entity has directed a request for information refuses to provide information or indicates an inability or unwillingness to provide information within 3 business days of the request, the licensee or other entity shall document this refusal, inability, or unwillingness in the licensee's or other entity's record of the investigation, and obtain a confirmation of employment or educational enrollment and attendance from at least one alternate source, with suitable inquiry questions answered to the best of the alternate source's ability. This alternate source may not have been previously used by the licensee or other entity to obtain information about the individual's character. If the licensee or other entity uses an alternate source because employer information is not forthcoming within 3 business days of the request, the licensee or other entity need not delay granting authorization to wait for any employer response, but shall evaluate and document the response if it is received.

(d) When any licensee or other entity in § 26.3(a) through (d) is legitimately seeking the information required for an authorization decision under this subpart and has obtained a signed release from the subject individual authorizing the disclosure of information, any licensee or other entity who is subject to this part shall disclose whether the subject individual's authorization was denied or terminated unfavorably as a